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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ZOHAR BOGIN, ARTHUR D. HUNTER, JR., and
KRISHNAMURTHY B. VENKATARAMANA

Appeal 2009-008186¹
Application 10/762,037
Technology Center 2100

Before HOWARD B. BLANKENSHIP, JEAN R. HOMERE, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL²

¹ Filed January 20, 2004. The real party in interest is Intel Corp. (App. Br. 3.)

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) (2002) from the Examiner's final rejection of claims 1, and 3-7. Claims 8 and 10-20 have been cancelled. Claims 21-29 have been withdrawn. (App. Br. 3.) We have jurisdiction under 35 U.S.C. § 6(b) (2008).

We affirm.

Appellants' Invention

Appellants invented a method for dynamically modifying the priority attribute of each of a plurality of requests to access a memory device in response to latency sensitivity thereof to thereby select one of the requests to send to the storage device. (Spec. 7, ¶¶ [0023-0025].)

Illustrative Claim

Independent claim 1 further illustrates the invention. It reads as follows:

1. A method comprising:

dynamically modifying one or more attributes of each of a plurality of requests to access one or more memory devices, wherein dynamically modifying the one or more attributes comprises dynamically prioritizing the plurality of requests in response to latency sensitivity of each of the plurality of requests; and

arbitrating among the plurality of requests to select a request to send to the one or more memory devices in a time slot based on the one or more attributes.

Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of unpatentability:

Somers	US 2002/0116555 A1	Aug. 22, 2002
Kurth	US 2003/0177296 A1	Sep. 18, 2003
Odman	US 2003/0210710 A1	Nov. 13, 2003

Rejections on Appeal

The Examiner rejects the claims on appeal as follows:

1. Claims 1 and 3 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Kurth.
2. Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Kurth and Odman.
3. Claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Kurth and AAPA.
4. Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Kurth and Somers.

Appellants' Contentions

Appellants contend that Kurth does not teach dynamically modifying the priority attribute of each of a plurality of requests in response to latency sensitivity of the requests, as recited in independent claim 1. (App. Br. 5.) According to Appellants, Kurth's disclosure is instead directed to selecting a

priority level from a configuration register and sending a priority request to an arbiter that indicates the selected priority level. (*Id.* 5.)

Examiner's Findings and Conclusions

The Examiner finds that Kurth's disclosure of dynamically increasing the priority level of a priority request as the request queue fills up, and as the time allocated for accessing the resource runs out teaches the disputed limitations. (Ans. 7-8.)

II. ISSUE

Have Appellants shown that the Examiner erred in finding that Kurth teaches dynamically modifying the priority attribute of each of a plurality of requests in response to latency sensitivity of the requests, as recited in independent claim 1?

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Kurth

1. Kurth discloses a method dynamically prioritizing a plurality of requests stored in a work resource queue to access a resource. In particular, a requesting agent selects a fixed or a dynamic priority level to include with a priority request to an arbiter. (Abstract, ¶ [0021].)

2. Kurth discloses that, upon selecting the dynamic priority level, the agent is able to increase or decrease the priority level of the priority request depending on whether the number of work requests in the request queue reaches a predetermined threshold value. If the number of work requests meets or exceeds the threshold value, the priority level of the request is increased before it is forwarded to the arbiter. (§ [0022].)

3. Kurth discloses the use of a timer to determine whether access is granted to a request within an allocated time. Upon determining that the priority request is not granted access before the timer expires, the agent increases the priority level of the request. (§ [0025].)

IV. ANALYSIS

We find no error in the Examiner's anticipation rejection of independent claim 1, which requires, *inter alia*, dynamically modifying the priority attribute of each of a plurality of requests in response to latency sensitivity of the requests. Appellants and the Examiner mainly disagree upon whether Kurth's disclosure teaches the cited limitations.

As detailed in the Findings of Fact section above, Kurth discloses that upon selecting a dynamic priority level, an agent can increase the selected priority level if the number of work requests in the request queue meets or exceeds a predetermined threshold. (FF. 1-2). Further, Kurth discloses that the agent can also increase the priority level of the request if it has not accessed the resource within an allotted time. (FF. 3.) We agree with the

Examiner that by increasing the priority level of the request, Kurth teaches modifying an attribute of the request before forwarding it to the arbiter. We also agree with the Examiner that by increasing the priority level when a predetermined time for accessing the request has elapsed, Kurth teaches modifying the request attribute in response to latency of the request. (Ans. 8.) It follows that Appellants have not shown error in the Examiner's rejection of claim 1.

Because Appellants argue the rejection of claims 1 and 3 as a single group, and further reiterate the same arguments of claim 1 for patentability of claims 4-7³, claims 3-7 fall with claim 1 in accordance with 37 C.F.R. § 41.37(c)(1)(vii).

V. SUMMARY

Appellants have not established that the Examiner erred in rejecting claims 1 and 3-7. We therefore affirm the Examiner's rejections as set forth above.

³ Appellants are reminded that merely reciting what a claim recites or making a general allegation of patentability is not a separate patentability argument. *See Ex parte Belinne*, No. 2009-004693, slip op. at 7-8 (BPAI Aug. 10, 2009) (Informative). Therefore, we find that Appellants' mere recitation of the claim language and re-statement of the Examiner's position without showing deficiencies therein does not constitute a persuasive rebuttal of the Examiner's rejection.

Appeal 2009-008186
Application 10/762,037

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2010).

AFFIRMED

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